

Catherine A. Laughner  
W. John Tietz  
BROWNING, KALECZYC, BERRY & HOVEN, P.C.  
801 W. Main, Suite 2A  
Bozeman, MT 59715-3336  
Phone: (406) 585-0888  
Email: [cathyl@bkbh.com](mailto:cathyl@bkbh.com)  
[john@bkbh.com](mailto:john@bkbh.com)

*Attorneys for Appellant Columbia Falls  
Aluminum Company*

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
COLUMBIA FALLS ALUMINUM  
COMPANY'S (CFAC) APPEAL OF  
DEQ'S MODIFICATIONS OF  
MONTANA POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT NO.  
MT0030066, COLUMBIA FALLS,  
FLATHEAD COUNTY, MT.

Case Nos. BER 2014-06 WQ

**COLUMBIA FALLS ALUMINUM  
COMPANY'S FIRST SET OF DISCOVERY  
REQUESTS TO THE MONTANA  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

Appellant Columbia Falls Aluminum Company ("CFAC") hereby submits to the Montana Department of Environmental Quality ("MDEQ"), through its counsel of record, the following First Set of Interrogatories pursuant to the Montana Rules of Civil Procedure to be answered within the time allowed by law:

**INSTRUCTIONS AND DEFINITIONS**

A. These Instructions and Definitions are not intended to broaden or narrow the scope of discovery permitted by the Montana Rules of Civil Procedure.

B. As used in these Interrogatories, "MDEQ," "you" and "your" shall mean the Montana Department of Environmental Quality, and any of its past or present officers, employees, agents, attorneys, accountants, consultants, experts, or other representatives,

including but not limited to the Montana Department of Environmental Quality.

C. As used in these Interrogatories, "Appeal" means the Appeal by Columbia Falls Aluminum Company (CFAC)

D. Unless otherwise stated herein, words and phrases in these Interrogatories shall have the same meaning as those in CFAC's Permit.

E. The terms "document(s)" has the same meaning as in the Montana Rules of Civil Procedure, and include all originals and nonidentical versions thereof stored in hardcopy, on computer readable media, electronically, or in any other fashion. Documents and writings requested herein, unless specified, are not limited to documents and writings prepared by MDEQ, but are intended to include all documents and writings in your possession, custody or control, responsive to the Interrogatories, regardless of who authored or prepared the documents and writings, or any portion thereof.

F. "Identify all documents" means to state the type of document (e.g., letter, email, memorandum, facsimile, report, etc.), its date, the author(s), addressee(s) and recipient(s), any file or control number assigned to the document, the present custodian of the document, and its general subject matter.

G. "Seeps" means the flowing seeps along the Flathead River as described:

(1) during low flow as described by EPA in Bill Engle's November 4, 1996 Inspection Report which, "continue along the river bank for over 1000 feet. In sampling done in 1991, these seeps have high levels of cyanide and flouride," and "During Flathead River, high flow, many of the seeps would be covered up. The seeps are probably groundwater moving underneath the CFAC plant operation. This groundwater has definitely been affected by past CFAC operations and practices as evidenced by the high levels of cyanide and fluoride."

(2) during high flow, as shown in the April 2015 seep video.

H. If any part of these Discovery Requests requests information that is claimed by

you to be privileged or otherwise protected from disclosure, set forth with particularity at the time of answering these Discovery Requests the part of the request that you assert is privileged or otherwise protected, and state the basis for each such claim, together with the following information:

If an attorney-client privilege, work product assertion, or any other privilege or protective rule is asserted with respect to an oral communication, please identify the date of the communication, the subject matter of the communication, the name and place of employment of each person present during the communication, and the name and place of employment of each person to whom the substance of the communication has been disclosed.

If an attorney-client privilege, work product assertion, or any other privilege or protective rule is asserted with respect to a document, please identify the type of each such document, the date of the document, each individual who authored the document and place of employment of such individual, each individual who received a copy of the document and place of employment of such individual, each individual to whom any portion of the contents of the document was disclosed and the place of employment of such individual, and the subject matter of the document.

These Discovery Requests are continuing in nature. If additional information (including the names and locations of persons having knowledge of discoverable matters) or documents responsive to a Request come to your attention or possession at any time during the course of this litigation, or if information is obtained which suggests that an answer is incorrect or that an answer, although correct when made, is no longer correct, please supplement your answers to these Interrogatories consistent with the Montana Rules of Civil Procedure.

## **INTERROGATORIES**

**INTERROGATORY NO. 1:** In a letter to Steven Wright dated May 2, 2013, MDEQ Environmental Science Specialist Christine Weaver stated the MDEQ's position that Outfall 006 is "not a regulated outfall as it is currently described and needs to be reconfigured." This determination is contrary to: (a) the letter from EPA Water Program Team Leader William E. Engle, P.E., to Steve D. Wright, CFAC Environmental Manager, dated November 4, 1996, which states: "EPA has made a determination that the seeps into the Flathead River constitute an unpermitted discharge and will need to be addressed in the re-drafted MPDES permit."; (b) the letter from MDEQ Administrator John L. Arrigo to Carol Rushin, EPA Office of Enforcement, Compliance and Environmental Justice, dated January 8, 1997, which states: "The Department of Environmental Quality acknowledges that the unauthorized seep discharge identified on property owned by CFAC is a discharge of wastes requiring a discharge permit under Section 75-5-605(2)(b) MCA of the Montana Water Quality Act."; and, (c) the letter from Timothy Byron, MDEQ Permitting & Compliance Division to Steve Right dated March 31, 1997, which states: "...the EPA requires that the seep discharge be listed as an outfall and assigned specific effluent limits." Please explain how the Department reached its conclusion that Outfall 006 is "not a regulated outfall" in light of the above referenced prior determinations.

### **ANSWER:**

**INTERROGATORY NO. 2:** Please state the basis for the MDEQ's statement in the 2014 Response to Comments that: "DEQ is not permitting historical disposal practices or release of contamination through general site ground water flow," when Permit MT-0030066, page 6 signed by F. Shewman in 1999 lists Outfall 006 as "ground water flowing beneath the plant site

and discharging to surface water in the Flathead River along a reach extending from Latitude 48 North, 23'18", Longitude 144 East, 7' 19" to Latitude 48 North, 23' 13", Longitude 144 East, 9' 04". The ground water receives wastewater from the north pond, south ponds, west pond, plant drywells, landfills used for historical waste disposal practices ..."

**ANSWER:**

**INTERROGATORY NO. 3:** In the 2014 Response to Comments, the MDEQ states: "DEQ is not permitting historical disposal practices or release of contamination through general site ground water flow. This is regulated by other programs, not MPDES." Please state what "other programs" preclude coverage under an MPDES Permit.

**ANSWER:**

**INTERROGATORY NO. 4:** Please describe how the MDEQ's 2014 statement that: "DEQ is not permitting historical disposal practices or releases of contamination through general site ground water flow" is consistent with the MDEQ's 1998 Statement of Basis, which states: "Under the stipulations of MPDES permit MT-00330066 CFAC implemented all reasonable land, soil, and water conservation practices by recontouring capping, and revegetating the closed landfill to reduce infiltration from precipitation."

**ANSWER:**

**INTERROGATORY NO. 5:** In preparing the draft 2014 Permit, please describe how the MDEQ evaluated the documentation of cyanide destruction contained in the MDEQ's 1999 Statement of Basis and in CFAC's 1998 Mixing Zone application?

**ANSWER:**

**INTERROGATORY NO. 6:** In preparing the 2014 draft Permit, please describe the methodology the MDEQ utilized to evaluate the volatilization and destruction of cyanide in

surface water exposed to sunlight?

**ANSWER:**

**INTERROGATORY NO. 7:** Please state in detail the rationale the MDEQ employed to determine in 2014 an acute mixing zone was not appropriate for cyanide.

**ANSWER:**

**INTERROGATORY NO. 8:** In determining that an acute mixing zone was not appropriate for cyanide, describe how the MDEQ considered the toxicity of metal cyanide complexes versus the toxicity of free cyanide.

**ANSWER:**

**INTERROGATORY NO. 9:** In preparing the 2014 Permit, please describe how the MDEQ considered historical information showing that the ongoing groundwater discharge under CFAC's previous permits has resulted in no observed impacts to the Flathead River.

**ANSWER:**

**INTERROGATORY NO. 10:** Please list all other MPDES permits the MDEQ has issued in the past 10 years that contain discharge limits or monitoring for cyanide. For each permit listed, please state the effluent limits that were contained in the permit, and whether they provided for an associated cyanide mixing zone.

**ANSWER:**

**INTERROGATORY NO. 11:** The City of Columbia Falls discharges to the Flathead River approximately four miles downstream of CFAC under MPDES Permit # MT0020036. This permit provides a mixing zone extending 6,000 feet downstream for ammonia and total residual chlorine. Please provide the rationale the MDEQ utilized in determining an acute mixing zone in the Flathead River for cyanide is inappropriate while a mixing zone for ammonia

in the Flathead River is appropriate.

**ANSWER:**

**INTERROGATORY NO. 12:** As described in Table 32 of the CFAC Statement of Basis for the 2014 Permit, the acute water quality standard for ammonia is 3.15 mg/L, whereas the City of Columbia Falls' MPDES Permit described in Interrogatory No. 11 allows the discharge of a monthly average of 40.0 mg/L. Please state the basis upon which the MDEQ determined the acute mixing zone in the Flathead River for the City of Columbia Falls was appropriate and what information MDEQ considered.

**ANSWER:**

**INTERROGATORY NO. 13:** In Response to Comment #17 regarding MDEQ's denial of a total cyanide acute surface water mixing zone, the MDEQ states "there is no actual biological data from the Flathead River to demonstrate that the discharge does not impair beneficial uses, including macroinvertebrates, amphibians, birds, or mammals." Please describe what types of studies, monitoring, and data collection activities the MDEQ would accept that would yield "actual biological data" to support an assessment of an acute mixing zone.

**ANSWER:**

**INTERROGATORY NO. 14:** Does the MDEQ consider Whole Effluent Toxicity test results to be "actual biological data" that can be used to demonstrate that effluent water does not impair beneficial uses or cause acute toxicity? If not, please explain the rationale for this conclusion.

**ANSWER:**

**INTERROGATORY NO. 15:** Does the MDEQ consider Whole Effluent Toxicity tests to be an accurate and valid assessment of the potential acute toxicity of an effluent?

**ANSWER:**

**INTERROGATORY NO. 16:** Does the MDEQ deny the 1999 MPDES permit issued to CFAC permitted the release of groundwater containing cyanide from onsite landfills to the Flathead River?

**ANSWER:**

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please provide copies of all study plans and final reports submitted within the past 10 years where actual biological data was collected and used to evaluate the appropriateness of an acute mixing zone to MDEQ satisfaction.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 2:** Please provide copies of other MPDES permits issued by the MDEQ in the past 10 years that included monitoring after treatment by ponds and before dilution by groundwater.

**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Please admit that the Montana mixing zone rules do not contain a definition of the term “discharge.”

**REQUEST FOR ADMISSION NO. 2:** Please admit that mixing zones are not limited to point source discharges.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 3:** Please admit that historical landfill practices are not precluded from mixing zone coverage.



**RESPONSE:**

**REQUEST FOR ADMISSION NO. 4:** Please admit that CFAC's 1998 Mixing Zone Application and the MDEQ's 1999 Statement of Basis specifically addressed all criteria listed in ARM 17.30.506, and the MDEQ considered these factors in granting an acute mixing zone for cyanide in the 1999 permit.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 5:** Please admit that cyanide exists in a number of chemical forms and that those forms have different toxicities.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 6:** Please admit that cyanide is broken down and attenuated by a number of geochemical processes, including oxidation, photolysis, chemical and biological degradation, and volatilization.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 7:** Please admit that Mont. Code Ann. § 75-5-103(25)(b) allows coverage for a variety of contaminant releases, including seepage, drainage, infiltration, or flow under Montana pollution discharge permit rules.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 8:** Please admit that CFAC has informed MDEQ of the nature of the groundwater seeps, that there are numerous seeps, and that seeps occur both above and below the water table.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 9:** Please admit that MDEQ has observed the seeps firsthand in the field and observed numerous seeps occurring.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 10:** Please admit that the MDEQ's 1999 Statement of Basis describes groundwater discharge and seeps as "Ground water discharges continuously to the backwater channel as discrete riverbank seeps as well as more diffuse."

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 11:** Please admit that MDEQ was aware that cyanide and fluoride from historical landfill practices discharged through groundwater to seeps that enter the Flathead River.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 12:** Please admit that the north and south pond systems provide primary treatment in the form of filtration and removal of particulates that contain metals and other regulated chemicals.

**RESPONSE:**

Submitted this 12<sup>th</sup> day of June 2015.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.



W. JOHN TIETZ

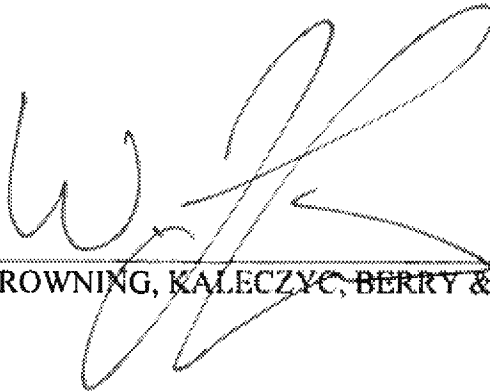
*Attorneys for Appellant Columbia Falls Aluminum Company*

## CERTIFICATE OF SERVICE

I hereby certify that this 12<sup>th</sup> day of June, 2015, I caused to be served a true and correct copy of the foregoing document and any attachments to all parties or their counsel of record as set forth below:

Kurt R. Moser  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620  
Phone: (406) 444-4009  
Email: kmoser2@mt.gov  
*Attorney for Department*

[ ] U.S. Mail, postage prepaid  
[ xx ] Electronic Mail  
[ ] Facsimile Transmission  
[ ] Personal Delivery



BROWNING, KALECZYK, BERRY & HOVEN, P.C.